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July 17, 1992

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Washington, D.C. 20554

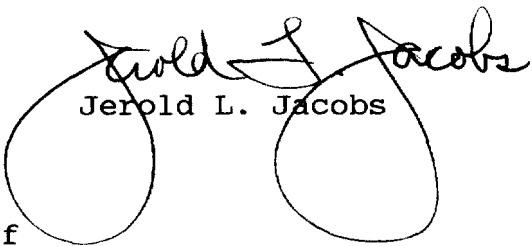
Re: **MM Docket No. 87-268**
Advance Television Systems

Dear Ms. Searcy:

On behalf of our client, Island Broadcasting Co., transmitted herewith for filing are an original and nine (9) copies of its "**Comments**" on two ALLOTMENT/ASSIGNMENT ISSUES in the **Second Report and Order/Further Notice of Proposed Rule Making** in the above-referenced matter.

Please direct any communications or inquiries concerning this matter to the undersigned.

Very truly yours,


Jerold L. Jacobs

Enc.

cc: Keith A. Larson, Chief
Mary M. Fitzgerald, Esq.
Regina Harrison
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R. Alan Stillwell (All FCC - By Hand)(All w/enc.)

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Advanced Television Systems)
and Their Impact upon the) MM Docket No. 87-268
Existing Television Broadcast)
Service)

TO: The Commission

COMMENTS OF ISLAND BROADCASTING CO.

ISLAND BROADCASTING CO. ("Island"), licensee of Low Power Television ("LPTV") Stations W38AM, Long Island City, New York, W44AI, Plainview, Hicksville, and Mineola, New York, and W54AY, Brownsville, New York, by its attorneys, pursuant to §1.415 of the Commission's Rules, hereby submits Comments on two **ALLOTMENT/ASSIGNMENT ISSUES** in the Second Report and Order/Further Notice of Proposed Rule Making ("FNPRM"), 7 FCC Rcd 3340 (1992). In support whereof, the following is shown:

I. INTRODUCTION

1. Island and its Technical Director and partner, Richard D. Bogner, have been intensively developing portions of a proposed ATV Table of Allotments, with special emphasis on the New York - New Jersey - Philadelphia, Pennsylvania corridor. With the useful insights gained from that effort, Island's Comments focus on two issues which are central to the Commission's proposal (FNPRM, ¶35) for the initial allotment/assignment of ATV channels:

(1) whether the Commission should allot ATV channels to each television station's community of license on a "community" basis, or whether ATV channels should be allotted in "blocks" to TV stations whose transmitters are approximately co-located; and

(2) whether the Commission will prescribe any methodology to guide broadcaster selection of ATV channels to "pair" with their NTSC channels.

As Island will now explain, it strongly urges that the Commission should make its ATV allotments on a "co-location" and "block" basis, should not include channel pairings in the Final ATV Table of Allotments, and should establish restrictive guidelines for broadcaster selection of ATV channels from the allotment blocks.

II. THE ATV TABLE OF ALLOTMENTS SHOULD ALLOT "BLOCKS" OF CHANNELS ON A TRANSMITTER CO-LOCATION BASIS

2. In Paragraph 18 of the November 8, 1991 Notice of Proposed Rule Making in this proceeding, the Commission proposed to allot ATV channels on a community-by-community basis. However, in Paragraph 35 and footnote 88 of the FNPRM, the Commission discusses ATV allotments solely in "nation-wide," "market-by-market," and "market" terms. Island generally applauds this emphasis away from a "community" allotment approach. However, instead of allotting ATV channels on a straight "market" basis, Island recommends that allotments should be made to groupings of TV stations whose transmitter sites are co-located or approximately co-located.

3. In many instances, especially in the major televis-

ion markets, Island's recommended approach will approximate TV "markets," but Island believes that using a co-location approach will eliminate the anomalies inherent in a "market" allotment methodology. Specifically, Island urges that the Commission should allot ATV channels in major metropolitan areas by grouping NTSC stations whose transmitter sites are co-located or approximately co-located, not by official "community of license".

4. The New York metropolitan area well illustrates the importance of using a "co-location" ATV allotment approach, instead of a community-by-community format. According to the 1991-92 Arbitron ADI Market Atlas (1992 Broadcasting & Cable Market Place, p. E-66), the New York market (ADI #1) comprises 22 full power TV stations allotted to 14 separate communities in New York State, New Jersey, and Connecticut.¹ Island submits that while, on the one hand, it is clear that the 14 communities should not be treated as 14 separate markets for ATV allotment purposes, it is also clear that the 22 stations should not be lumped together as one "market".

5. Analyzing the 22 stations, Island notes that 12 of them have transmitter sites on either the World Trade Center or the Empire State Building, thereby satisfying Island's co-

¹ The communities and numbers of allotments are as follows: New York City (7); Newark NJ (2); Linden NJ (1); Paterson NJ (1); Secaucus NJ (1); Bridgeport CT (2); Poughkeepsie NY (1); Kingston NY (1); Smithtown NY (1); Riverhead NY (1); Montclair NJ (1); Garden City NY (1); Newton NJ (1)[unbuilt construction permit]; and West Milford NJ (1) [unbuilt construction permit].

location or approximate co-location standard (the two buildings are less than three miles apart). In practical terms, treating these 12 stations as a unit would mean that the seven New York City stations, the two Newark stations, and the Linden, Paterson, and Secaucus, New Jersey stations (one each) will comprise the New York allotment grouping for ATV purposes.

6. Island urges that the remaining nine communities in ADI #1 are too distant from the market's core city of New York and from the approximately co-located New York transmitter sites to allow inclusion in a technically viable allotment group. Moreover, two of the putative station communities involve unbuilt construction permits. Island urges that maximizing allotment flexibility for the Commission and minimizing the ability of individual licensees to have a "lock" on specific ATV channels dictates that the Commission should allot ATV channels by co-located groupings, not on a "community of license" basis.

7. For similar reasons, Island maintains that in allotment groupings which have more than one TV station, the Commission's Final Table of Allotments should allot channels as a block -- without NTSC/ATV pairings -- so that there are at least enough channels allotted for all of the NTSC stations in the group. Thus, in the New York grouping, a block of at least 12 ATV channels should be allotted for the 12 NTSC stations. In this way, the communities of Linden, Paterson,

and Secaucus, each of which has only a single TV station, would not be allotted separate ATV channels in the Table of Allotments, but would be provided for as part of the New York block of ATV frequencies. Then, as described in Section III below, the 12 NTSC licensees would apply for specific ATV channel pairings on an as-needed demand basis in the construction permit application process.

**III. THE COMMISSION SHOULD PRESCRIBE GUIDELINES
FOR SELECTION OF ATV CHANNELS WITHIN MARKETS**

8. The Commission seeks comment in Paragraph 35 of the FNPRM on allowing broadcasters to "negotiate with each other and submit plans for pairing NTSC and ATV channels either nationwide or on a market-by-market basis". Island strongly opposes including such NTSC/ATV pairings in either the sample or the Final ATV Table of Allotments. Instead, Island urges that the Final Table should contain only ATV allotment blocks of channels and that actual NTSC/ATV pairings should be made by the Commission only on an as-needed demand basis as part of the ATV channel application process. Under Island's recommended procedure, specific channel pairings would follow strict Commission assignment guidelines and would be subject to rejection, on the Commission's own motion or in response to petitions to deny under §73.3584 of the Rules, even if a proposed pairing resulted from station negotiations.

9. The purpose of Island's proposed NTSC/ATV pairing guidelines -- and the reason for its opposition to pairings

in the Final ATV Table of Allotments -- is to diminish the ability of NTSC stations to intentionally or unintentionally, anticompetitively or innocently, select from an allotment block specific ATV channels which would prematurely or unnecessarily force off the air, displace, or psychologically disrupt licensed LPTV or television translator stations currently occupying the selected channels. By adopting a no-advance-pairings/immediate-need approach to specific ATV assignments, the Commission will prevent NTSC stations from "pocketing" ATV channels in an allotment block by private agreement among some or all of the NTSC stations in the allotment group and then delaying formal application to the Commission for the channel for months or even years, which, in turn, would postpone commencement of the three-year ATV construction "clock".

10. Island maintains that such a "negotiated" or inadvertent slow-down in ATV implementation would clearly defeat the Commission's purpose in setting a two-year limit for filing ATV applications and a three-year construction limit, and the Commission should not ratify such potentially anti-competitive or simply viewer-disruptive "warehousing" situations. Moreover, Island urges that rigorous Commission adherence to the two-year and three-year limits are both needed to ensure that the selection of specific ATV channels on a demand basis is not distorted by the seeming "unavaila-

bility" of ATV channels which have been chosen by NTSC stations but are not being actively applied for or built.

11. Instead of allowing pre-application pairings of NTSC and ATV channels, with the great risks of the above-described delayed ATV implementation and premature or unnecessary LPTV/translator negative impact, Island maintains that, as in the AM service, when an NTSC station files an FCC Form 301 application for its "new" ATV channel/station, it should specify its proposed pairing and demonstrate "good cause" for the selection of that ATV channel from the channels remaining unapplied for and unallotted in the market's allotment block. The essential pairing guideline which Island recommends is that an NTSC station should be precluded from specifying an ATV channel which will require the displacement of a licensed LPTV or translator station unless there is a compelling public interest justification for selecting that channel ahead of an unoccupied ATV channel in the market's allotment block.²

12. Island believes that compelling justifications for selecting an occupied LPTV or translator channel could include situations in which the distance to an NTSC full service co-channel allotment is significantly greater for that licensed LPTV/translator channel than for any other remaining unapplied for and unallotted ATV channel in the allotment block, or if

² Where two or more applicants propose the same ATV channel, the one with the earliest file number should be given a "first-come-first served" preference if its "good cause" showing is persuasive; the remaining applicants would have to propose other channels.

the need for co-location of adjacent channels requires use of a licensed LPTV/translator channel next among the remaining ATV channels in the allotment block. On the other hand, Island submits that non-compelling or insufficient justifications to drive a licensed LPTV or translator station off the air earlier than necessary would include: a bare "wish" to use an ATV channel near the NTSC channel; ease of combining transmitting antennas; the (mistaken) belief that a lower UHF channel has superior propagation characteristics; and the transparent desire to eliminate a competitive LPTV or translator station.

13. Furthermore, Island urges that the Commission should specifically advise NTSC applicants that their applications will be subject to petitions to deny, and actual dismissal or denial, if they fail to satisfy the Commission's ATV channel selection guidelines.

14. Although Island previously suggested in its January 17, 1992 Reply Comments that minimizing LPTV/translator displacements should be a major goal of this proceeding, the Commission summarily and, Island believes, incorrectly rejected that proposal with the statement (FNPRM at ¶42) that: "[T]here is insufficient spectrum to...factor in LPTV displacement considerations in making ATV assignments". In Island's view, it is obvious that the ATV channel selection restraints it is now proposing do not cost any spectrum, nor do they impose any significant efforts or meaningful penalties

upon NTSC stations. However, such restraints may add years of valuable community service to a licensed LPTV or translator station, since there may be a long time spread among actual ATV on-air dates, especially when noncommercial ATV channel utilization is involved (per Paragraph 37 of the FNPRM).

15. Therefore, Island respectfully urges that the Commission should impose Island's reasonable channel selection restraints. The Commission may continue to classify LPTV and translator services as "secondary" to full power NTSC stations, but this provides no justification for NTSC stations to prematurely or unnecessarily destroy LPTV/translator television service during the ATV channel selection/application process. Such activity clearly would be contrary to the paramount public interest.

IV. CONCLUSION

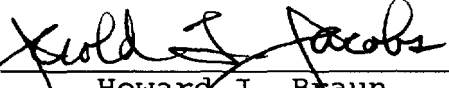
WHEREFORE, in light of the foregoing, Island respectfully requests that the Commission should make its ATV allotments in "blocks" to TV stations whose transmitters are approximately co-located, and should establish restrictive guidelines for broadcaster selection of ATV channels from the allotment blocks in each TV market. These guidelines should tend to prevent an "early user" of ATV from displacing a licensed

LPTV/translator station while unused channels lie fallow for months or years -- and all at no cost to anyone.

Respectfully submitted,

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By


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Dated: July 17, 1992